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Larry M. Weil, Planning Director  
Steven Zimmer, Senior Planner  
Lisa Sankey, Assistant Planner

West Fargo Planning and Zoning Commission  
March 11, 2013 at 7:00 P.M.  
West Fargo City Hall

Members Present: Jerry Beck  
Connie Carlsrud  
LeRoy Johnson  
Tom Kiewel  
Frank Lenzmeier  
Tom McDougall  
Terry Potter

Members Absent: Edward Sheeley

Others Present: Larry Weil, Lisa Sankey, Dustin Scott, Glen Gordon, Dan Bueide, Kyle Freier, Kris Peterson Tim Solberg,  
Jim Hayden

The meeting was called to order by Chair Lenzmeier.

Commissioner Potter made a motion to approve the February 11, 2013 meeting minutes as printed. Commissioner McDougall seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A13-11 West Lake 2<sup>nd</sup> Addition, Replat & Planned Unit Development Amendment of Lots 1 & 2, Block 1 of West Lake 1<sup>st</sup> Addition, City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property, which is west of Sheyenne Street and south of 32<sup>nd</sup> Avenue West, was replatted and rezoned to Planned Unit Development for high density residential uses in May of 2003. A Planned Unit Development Amendment for a 78-unit apartment building was reviewed and approved by the City in June of 2004. In November of 2007, the area was replatted into three separate lots.

The applicant is now proposing to replat the undeveloped lots for construction of additional apartment buildings. A high density multiple family use for the property is consistent with the Land Use Plan of the Comprehensive Plan.

The developer has submitted a preliminary plat, area plan and site plan for review. The property is located on the south side of 33<sup>rd</sup> Ave W and on the east side of 8<sup>th</sup> St W, in the Eagle Run area. The original PUD approved for this property showed a larger single building on proposed Lot 1 and is now being proposed with two smaller buildings, which requires a PUD Amendment. The current owner wishes to reconfigure the two lots.

As proposed lot sizes would be; Lot 1 – 129,876 ft<sup>2</sup>, and Lot 2 – 195,941 ft<sup>2</sup>. Lot 3 is developed with a 78 unit apartment building, along with garages and parking lots. The preliminary plat shows that Lots 1 and 2 would be accessed off of 33<sup>rd</sup> Ave W from the north. As with the previous plat, Lot 2 requires a cross-access easement for access off of 33<sup>rd</sup> Ave W, which is shown on the plat as a 32' access easement that was approved on the original plat.

The site plan shows two 30-unit apartment buildings along the north side of Lot 1, as well as six garage structures. Required parking for these buildings would be 120 parking spaces. There are 125 spaces shown on the site plan. Garage 1B on the west edge of the property is shown as encroaching on the required setback and must be moved to the northeast to meet the 25' required setback. The northwest corner of Building 1 (covered deck) is shown as encroaching 2' into the required setback, which seems acceptable to staff as it does not require a foundation and thus would only be above ground.

Water and sewer easements should also be shown on the plat prior to filing.

Parking requirements are figured using the number of bedrooms or floor area/440, whichever is greater. Parking requirements will be figured at the time a building permit is applied for.

The proposed use is consistent with City Plans and Ordinances

City Departments, Utility companies, the post office and area property owners within 150' were notified regarding the proposed replat and PUD Amendment.

The request is conditionally approved on the basis that it is consistent with City plans and ordinances. The conditions of approval are as follows:

1. An Attorney Title Opinion is received.
2. A certificate is received showing taxes are current.
3. Final Plat with necessary easements is received.
4. Garage 1B is relocated to meet setback requirement along 8<sup>th</sup> Ave W.
5. A revised drainage plan is received and approved.
6. A landscape plan meeting the City's landscape standard is received prior to permitting.

Larry stated that an additional condition would be that a PUD Agreement received.

Kyle Freier, Paces Lodging and representing the client, stated that he's requesting a variance on the garage encroachment.

There were no other comments from the public, the hearing was closed.

Commissioner McDougall asked about the garage issue. Larry stated it was the first he'd heard of a variance and there is specific criteria for granting one, which includes:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;
2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

Commissioner Kiewel asked if the P&Z Commission could allow the variance. Larry stated that it wasn't in the application and the public hearing didn't advertise for it. Mr. Freier stated that in an effort to keep this application proceeding, they were fine with staff recommendations. Commissioner McDougall stated that condition #4 addresses the garage.

Commissioner McDougall made a motion for approval based on the 6 conditions listed in the staff report, as well as an additional condition that a PUD Agreement received. Commissioner Carlsrud seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A13-12 West Lake 3<sup>rd</sup> Addition, Replat & Rezoning from R-3: Multiple Dwellings to PUD: Planned Unit Development of Lot 59, Block 2 of Eagle Run 11<sup>th</sup> Addition, City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property, which is west of Sheyenne Street and south of 32nd Avenue West, was platted and zoned R-3 for high density residential uses in May of 2003. The applicant is now proposing to replat the property into 5 separate lots, each of which will contain one building. The Planned Unit Development will be set up to allow the green space/landscape requirements to be calculated as a cumulative for all five lots, instead of on a lot by lot basis, which is what normal policy would require. A high density multiple family use for the property is consistent with the Land Use Plan of the Comprehensive Plan.

The developer submitted a preliminary plat and site plan for review. The property is on the south side of 33<sup>rd</sup> Ave W and on the west side of 5<sup>th</sup> St W, in the Eagle Run area. The current owner wishes to divide the property into 5 lots. The lot is currently 8.2 acres in size. Proposed lot sizes would range between 61,764 and 78,990 ft<sup>2</sup>. The first lot to develop is proposed Lot 1.

The site plan shows a 33 unit building being built along the retention pond on the west side of the property and garages on the east side along 5<sup>th</sup> St W. It is not ideal for a development to have accessory building fronting public ROW, however, the site plan shows a setback of 34' from the right-of-way to the garages, which would be allowed under the R-3 zoning (minimum 25'). The garage along the very south lot line must be moved back to meet the 25' setback requirement from 5<sup>th</sup> St W. Consideration should be given to adding brick/stone wainscoting to the garage side fronting 5<sup>th</sup> St W to improve visual appeal from Eagle Run entrance at 34<sup>th</sup> Ave W. Landscaping is shown and will be reviewed in more depth prior to permitting according to the City's landscape standard.

The preliminary plat shows Lots 4 & 5 would be accessed off 33<sup>rd</sup> Ave W from the north. Lots 1 & 2 would be accessed off 5<sup>th</sup> Street West. Lot 3 should have a better defined access and not just the corner of an easement. Easement width as shown on the plat is 36', which staff believes is adequate. Water and sewer easements should also been shown on the plat.

Parking requirements are figured using the number of bedrooms or floor area/440, whichever is greater. Parking requirements will be figured at the time a building permit is applied for.

Property owners within 150', City Departments, utility companies and post office were notified regarding the replat and rezoning.

The request is conditionally approved on the basis that it is consistent with City plans and ordinances. The conditions of approval are as follows:

1. An Attorney Title Opinion is received.
2. A certificate is received showing taxes are current.
3. A revised site plan is submitted addressing the setback issue.
4. A revised drainage plan is received and approved.
5. Necessary easements are placed on the Final Plat.
6. PUD agreement is received.

There were no comments from the public. The hearing was closed.

Commissioner McDougall asked about item #3, setback issues. Larry stated that the garages on the south side not only need to be setback 25' from the front property line, but also further from the side yard because it is located in front of the principal structure. If the apartment building was located in the front, the side yard setback could be 3'.

Mr. Freier stated the front yard setback will be 25'. Larry stated that the only issue would be the side yard setback.

Discussion was held regarding extending the access easement. Larry stated that it's to insure every property has adequate access.

Commissioner McDougall made a motion for approval. Commissioner Kiewel seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A13-13 Hayden 1<sup>st</sup> Subdivision, Subdivision & Rezoning from Agricultural to R-1E: Rural Estate District, property in the NE½ of Section 19, T140N, R49W, Cass County, North Dakota.

Larry reviewed the following information from the staff report:

The property is located in the City's extraterritorial area about two miles north of West Fargo, in the southeast corner of the intersection of Cass County #17 and Cass County #20. The plat area consists of three existing Auditors Lots. The property is located outside of the Sheyenne Diversion and appears to be within a flood hazard area in Reed Township. The applicant proposes constructing a second home on the property.

The applicant submitted a preliminary plat showing 3 lots, as well as an area plan. The owner of the property would like to plat and rezone to allow for his son to construct a house on proposed Lot 1. The existing home will be platted as Lot 2. Lot 3 is a dedicated floodway and will remain as such.

The applicant is requesting that the property be rezoned to R-1E: Rural Estate District which will be better suited for the property as developed. There was a CUP approved for an accessory building approved for this property in October of 2012. Access to the lot will be provided via access easement from County Hwy 17. Cass County standard for right of way is 200' for County roads. This Plat shows 75' for half and would net 150'. This meets city standards. The city cannot require any greater than 150' for any road ROW, without an agreement to buy the additional area. This area is under West Fargo's subdivision and zoning jurisdiction and thus cannot require the property owner to increase their ROW dedication. If the property owner is agreeable to dedicating the additional 25' it can be added to the plat.

Notices were sent out to area property owners, City Departments, Park District, Cass County, SE Cass Water Resource District, Reed Township and Post Office and Utility Companies for review. We have received comments from Cass County as discussed previously.

It is recommended to conditionally approve the application on the basis that it is consistent with City plans and ordinances. The conditions of approval are as follows:

1. An attorney title opinion is received.
2. A certificate is received showing that taxes are current.
3. Necessary easements are placed on the Final Plat.
4. A drainage plan is received and approved by the City Engineer.
5. Additional right-of-way is received if necessary.

Chair Lenzmeier asked who determines additional right-of-way. Larry stated that the City is limited in terms of how much it can request, unless the applicant is willing to dedicate more.

County Planner Tim Solberg stated referred to the letter he submitted regarding additional right-of-way and the Cass County Highway Access Ordinance. The purpose of which is to make a point to accommodate speed, ditches, sloping and future growth. The county doesn't want to have to buy roads, fencing, buildings, trees and they've found that with wider ditches, they need at least 80' of right-of-way.

There were no comments from the public. The hearing was closed.

Commissioner Johnson asked about property in the floodway. Mr. Solberg stated that Lot 3 is in the floodway.

Jim Hayden stated that he wasn't aware of the additional 25' when Moore came in with the preliminary plat. They spoke about 75'. Even if they had to go with 100' it would involve the tree rows, which really wouldn't involve them. Tim stated that the County Engineer has an administrative variance application. The intent would be to just have the property available should it be needed in the future. Larry stated that another option would be requiring a buffer easement of up to 30'. They'd still own it.

Chair Lenzmeier asked Mr. Hayden if they'd be willing to address the right-of-way issue. Mr. Hayden indicated he believed so. Tim stated that they have 75' and can work with Larry and the developer.

Commissioner McDougall stated that item #5 deals with the right of way issue. He made a motion to approve the request subject to the 5 conditions listed in the staff report. Commissioner Potter seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A13-14 Conditional Use Permit for hair salon at 1438 Elmwood Court (Lot 22, Block 2 of Sheyenne Park 3<sup>rd</sup> Addition), City of West Fargo, North Dakota.

Larry reviewed the following information from the staff report:

The property is located south of 13<sup>th</sup> Avenue West, east of 8<sup>th</sup> Street West, on the west side of Elmwood Court. The applicant has been running a hair salon for a number of years and would like to work from home. The proposed use would be allowable as a conditional use within the R-1A: Single Family Dwelling District.

The applicant has submitted an application for a conditional use permit and intends to add onto her home to allow for a hair salon. This was reviewed and approved in December 2012 by the Planning and Zoning Commission; however, was denied by the City Commission at a later date. The property has a double-stall garage and two-stall driveway which accesses Elmwood Court.

Home based businesses are required to provide off-street parking for customers in addition to the two required spaces for all single family residential units. Currently the property can accommodate 2 on-site/off-street parking spaces in addition to the two spaces in the garage for the residential use. All spaces are constructed of a durable material, concrete or asphalt.

As per Chapter 4-448, #5; ...”the entrance to the space devoted...shall be within the dwelling unit, or designed such that it is not noticeable from the public street.” The site plan submitted shows an entrance on the front side of the house directly into the space devoted to the salon, which is not allowable. The door needs to either be removed and access be from within the existing home or moved to the side or rear of the addition.

With reference to the criteria for granting conditional uses, the following is noted:

1. Ingress and egress to the property for vehicles are from Elmwood Court.
2. Home based businesses are required to provide off-street parking of one space for every customer in addition to the two required spaces for all single family residential units. It is important to keep space free in the driveway for customers and not infringe on the on-street parking.
3. The economic, noise, glare or odor effects of the proposed conditional use on adjoining properties and properties generally in the district do not appear to be a problem.
4. Signs, yards and open space, and soil conditions all appear to be adequate where applicable to the site.
5. The proposed use is viewed as generally compatible with adjacent properties and other properties in the district.

Notices have been sent to property owners within 350’.

Staff recommends conditional approval only if ALL of the following conditions are met:

1. Entrance on the front side of the salon space must be either moved or removed and new drawings submitted to staff.
2. Adequate off-street parking spaces are provided to meet city code requirements.

There were no comments from the public. The hearing was closed.

Commissioners asked if Ms. Peterson understood the conditions. Ms. Peterson stated that whatever the City prefers, she’s okay. She has minimal clientele, has been out of work for over a year, just wants to be at home with her children...

Commissioner Kiewel asked if she’ll have any other employees. Ms. Peterson indicated no.

Discussion was held regarding the separate entrance. Ms. Peterson asked if she needs to get rid of the front door. Larry stated that she can’t have a separate entrance.

Commissioner Kiewel asked if there was adequate parking. Larry stated that if it’s by appointment only, and there’s only one person working there it should be adequate.

Chair Lenzmeier asked if the two conditions can be worked out with staff. Larry stated yes.

Commissioner McDougall made a motion for approval based on staff recommendations. Commissioner Beck seconded the motion. No opposition. Motion carried.

The next item on the agenda was Minor PUD Modification for 1910 9<sup>th</sup> Street East (Lot 4, Block 1 of Charleswood 29<sup>th</sup> Addition), City of West Fargo, North Dakota.

Larry reviewed the revised site plan for the Blarney Stone. The request is to amend the PUD to allow a change to building orientation and parking layout for a proposed restaurant.

Staff has reviewed these changes and recommends the approval of the Minor PUD Modification.

Commissioner Kiewel made a motion for approval. Commissioner McDougall seconded the motion. No opposition. Motion carried.

The next item on the agenda was Minor PUD Modification for child care facility for up to 12 children at 2360 7<sup>th</sup> Avenue East #3 (Lot 3, Block 1 of Meadow Ridge 15<sup>th</sup> Addition), City of West Fargo, North Dakota.

Larry reviewed the following:

The applicant has requested a minor revision to the Detailed Development Plans as previously approved for Meadow Ridge 15<sup>th</sup> Addition. The request is to amend the PUD to allow a proposed child care facility for up to 12 children to be cared for within a condominium unit. This would be for the Perry Center to the north. They own a couple of the condominium units. The applicant has submitted a site plan showing drop off areas and play area with fence. Notices have been sent out to neighboring properties and we have not received any comments.

Staff has reviewed the application and recommends the approval of the Minor PUD Modification.

Commissioner McDougall made a motion for approval. Commissioner Beck seconded the motion. No opposition. Motion carried.

The next item on the agenda was Continued Public Hearing A13-9 Christianson 2<sup>nd</sup> Addition, subdivision & rezoning from Agricultural to PUD: Planned Unit Development, property in the SE¼ of Section 18, T139N, R49W, City of West Fargo, North Dakota.

Larry stated that at the last meeting it was determined the application should be tabled until the March meeting. There were no concerns with the plat; it was more with whether the proposed use fits with the listed allowable uses for the PUD district.

Larry then reviewed the following information from the staff report:

The applicant provided additional information on Thursday, March 7<sup>th</sup> after the agenda was sent out, so it was not included in the packet. An e-mail was sent out with a copy of the plans on Friday, March 8<sup>th</sup>. The information includes a site plan and landscape information, semi-truck entry and exit information, and elevation plans which take into consideration the Corridor Overlay District building design standards. No information was submitted describing the use.

The City application for Property Tax Incentives for New or Expanding Businesses reflects that the business is manufacturing. The business provided information which provides more detail about the nature of the business.

It is apparent to the Planning staff that the use does not fit into the categories listed in the PUD Standards for Christianson 1<sup>st</sup> Addition. The same standards are recommended for Christianson 2<sup>nd</sup> Addition. The uses listed which are most closely related are the following:

- 1) Light manufacturing and similar type operations which are consistent with the CM District. An example would be a cabinet shop, which is considered manufacturing, but would still have a front office/retail showroom component.
- 2) Plumbing and heating shops, sheet metal shops, roofing shops.

After reviewing the information provided by the business in their property tax incentive application, it is apparent the use would be classified as Heavy Industrial for fabricated metal products as listed in the City's Land Use Classification System.

It is recommended the proposed manufacturing use be denied for the proposed Christianson 2<sup>nd</sup> Addition. If the developer wishes to continue the subdivision, it is recommended the subdivision be conditionally approved subject to the same PUD Standards applying to the subdivision as approved for Christianson 1<sup>st</sup> Addition, as well as to the other conditions listed in the staff report.

Kyle Freier, Paces Lodging, asked for consideration of their request. Since the last meeting they've revised the site plan and elevations based on concerns brought up at the last meeting.

Glen Gordon, Diversified Welding, stated that they're looking to expand their investment. Last time the biggest issue was the outside storage. He indicated they do some heavier stuff and a lot of lighter stuff, which will be kept entirely inside the building. One would have to be inside the building to know what's going on; there shouldn't be any indication from the outside. There's limited truck traffic onto the site. They've focused a lot on the building's appearance.

There were no other public comments. The hearing was closed

Commissioner Kiewel asked about the type of products and work. Mr. Gordon stated that they do some metal work, cutting – it's very diverse. Commissioner Kiewel asked if it was product or pieces. Mr. Gordon indicated pieces. He also stated that they don't paint onsite. Almost everything is powder coated and that's now done at Neil's Industrial Painting.

Chair Lenzmeier asked if their current setup is similar to what he's planning to have here and asked about the number of welders on the equipment list. Mr. Gordon stated that they don't have outside storage, no fence. The type of welding varies light to heavy.

Commissioner Potter asked about the expansion area, if it would be used for storage. Mr. Gordon stated no, it would be kept as greenspace.

Commissioner Beck stated that most of his questions from the last meeting had been answered; he's familiar with this type of work and feels comfortable with this approving this project.

Dan Bueide, representing Wally and Violet Beaton who own property on the north side of I-94, stated that he's lost two buyers due to the self storage. He's discussed the importance of what it's going to look like with the developer and is not as concerned with the use, but more with aesthetics. He suggested vegetative screening, a 2' berm with pines along I-94 rather than chain link with slats. Increasing plantings would improve the looks. Mr. Bueide stated that he's not worried about this use, there doesn't appear to be odor or noise, there's minimal vehicle storage.

Mr. Freier stated that he's agreeable to working with Mr. Bueide and with including additional vegetative screening. He stated that they can add plantings to the properties they control and try to work with properties they don't.

Commissioner McDougall indicated that for the most part, concerns have been addressed and asked how this should proceed. Should conditions be placed on it, will it have to come back before the P&Z? Discussion was held regarding the existing PUD Standards. Larry stated that it can be rezoned to PUD with the same standards as Christianson 1<sup>st</sup> or with changes.

Commissioner Beck made a motion for approval subject to revisions to include the additional use and additional landscaping, as well as based on the following staff recommendations listed in the staff report:

1. An Attorney Title Opinion is received.
2. A certificate of taxes showing taxes being current is received.
3. A Drainage Plan is received and approved by the City Engineer.
4. A Final Plat with any necessary easements is received.
5. The required utility hook-up fee is adequately addressed.
6. A park dedication agreement is received.
7. A subdivision improvement agreement is received.
8. A mail delivery plan is approved by the Post Office.
9. Uses for this development are agreed upon by both developer and city

Commissioner McDougall seconded the motion. No opposition. Motion carried.

Commissioner McDougall made a motion to adjourn. Meeting adjourned.